

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

**JOSEPH L. TEDESCO, PHOENIX CAPITAL
WORLDWIDE II, L.P. and PHOENIX CAPITAL
WORLDWIDE MANAGEMENT II, LLC,**

Plaintiffs,
-against-

Civ. Action No. 08 cv 5001

**JASON JOHN KONIOR, PHOENIX CAPITAL
WORLDWIDE, LP and PHOENIX CAPITAL
WORLDWIDE MANAGEMENT, LLC,**
Defendants.

To: CLERK
United States District Court
Southern District of New York

REQUEST TO ENTER DEFAULT PURSUANT TO FED. R.CIV. P. 55(a)

Please enter a default of defendants Jason John Konior, Phoenix Capital Worldwide, LP and Phoenix Capital Worldwide Management, LLC, in accordance with Rule 55(a) of the Federal Rules of Civil Procedure for failure to plead or otherwise defend the above-captioned action as fully appears from the Court file herein and from the attached declaration.

Dated: New York, New York
August 19, 2008

SAM P. ISRAEL, P.C.

By:S_____
Sam P. Israel (SPI0270)
Attorney for Plaintiffs
1 Liberty Plaza
23rd Floor
New York, N.Y. 10006
Tel: 212-201-5345
Fax: 212-201-5343

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**JOSEPH L. TEDESCO, PHOENIX CAPITAL
WORLDWIDE II, L.P. and PHOENIX CAPITAL
WORLDWIDE MANAGEMENT II, LLC,**

Plaintiffs,
- against -

**JASON JOHN KONIOR, PHOENIX CAPITAL
WORLDWIDE, LP and PHOENIX CAPITAL
WORLDWIDE MANAGEMENT, LLC,**

Case #: 08 cv 5001

Defendants.

DECLARATION IN SUPPORT OF NOTATION OF DEFAULT

Sam P. Israel, pursuant to 28 U.S.C. § 1746, declares under penalties of perjury as follows:

1. I am counsel to Plaintiffs Phoenix Capital Worldwide Management II, LLC, Phoenix Capital Worldwide II, LP and Joseph Tedesco (collectively, “**Plaintiffs**”) and admitted to practice before this Court where I remain in good standing. I submit this declaration in support of the Clerk’s issuance of a certificate of default by defendants Jason Konior, Phoenix Capital Worldwide Management, LLC and Phoenix Capital Worldwide, LP (collectively, “**Defendants**”) pursuant to Fed. R. Civ. P. 55(a).

2. This action was commenced by service of process on defendants on May 30, 2008.

3. Service was achieved on Defendants that day at 3:44 p.m. by my personal delivery of the Plaintiffs’ summons and complaint upon defendants, care of an individual serving as receptionist at 20 West 20th Street, N.Y. 10011. the Defendant’s business address. (Exh. 1.)

4. Additional service of the summons and complaint was made that same day upon the Defendants’ then counsel, Michael Utilla, Esq. at 26 Court Street Suite 2810, Brooklyn NY 11241.

5. The Court’s preliminary injunction order was served personally upon the

Defendant Jason John Konior at the Defendants' offices, 20 West 20th Street, on June 10, 2008.
(Exh. 2.)

6. The Court has subject matter jurisdiction over this action in accordance with 28 U.S.C. §§1331, in that the Plaintiffs assert a claim under Section 43 of the Lanham Act, 15 U.S.C. § 1125(a) and seek a declaratory judgment under 28 U.S.C.S. § 2201 and pursuant to the doctrine of supplemental jurisdiction under 28 U.S.C. §1367.

7. Venue is proper in this district pursuant to 28 U.S.C.A. § 1391(a) and (c) because a substantial part of the events or omissions giving rise to the underlying claims occurred in this District and because the Court has jurisdiction over the Defendants in this State.

8. The time within which Defendants may have answered or otherwise moved with respect to the complaint herein has expired; said defendants have not answered or otherwise moved with respect to the Complaint and the time for the Defendants to do so has not been extended.

9. Defendants are not infants or incompetents. Two of the defendants are corporate entities. The individual defendant, Jason John Konior is not in the military service of the Untied States.

10. By reason of the foregoing, I respectfully request that the Court enter a notation of default by the Defendants, a form of certificate being attached hereto as Exhibit 3.

11. I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
August 18, 2008

S:\:_____
Sam P. Israel (SPI0270)

**Sam P. Israel, P.C.
Attorney for Plaintiffs
1 Liberty Plaza
Twenty Third Floor
New York, NY 10006
Tel: 212-201-5345
Fax: 212-201-5343**

To:

1. Jason John Konior, 30 Alice Court, Bethpage, N.Y. 11714.
2. Jason John Konior, Phoenix Capital Worldwide Management, LLC and Phoenix Capital Worldwide, LP, 20 West 20th Street, Suite 217 New York, N.Y. 10011.

EXHIBIT 1

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

08 Civ. 5001 (PKC)

**JOSEPH L. TEDESCO, PHOENIX CAPITAL
WORLDWIDE II, L.P. and PHOENIX CAPITAL
WORLDWIDE MANAGEMENT II, LLC,
Plaintiffs ,**

- against

**JASON JOHN KONIOR, PHOENIX CAPITAL
WORLDWIDE, LP and PHOENIX CAPITAL
WORLDWIDE MANAGEMENT, LLC,**

Defendants.

-----x

Affirmation of service

Sam P. Israel hereby affirms under the penalties of perjury as follows:

1. I am counsel to the Plaintiffs in this case.
2. On May 30, 2008 at 3:44 p.m. I personally delivered a copy of the Court's order to show cause, as issued that day, together with the Plaintiffs' summons and complaint, a declaration of Joseph Tedesco submitted in support of the Plaintiffs' motion for a preliminary injunction, together with supporting exhibits and the Plaintiff's memorandum of law in support of the motion for a preliminary injunction upon defendants, care of an individual serving as receptionist at Suite 217, 20 West 20th Street, the Defendant's business address, namely Alice Palenque.

Dated: June 4, 2008
New York, NY

S:/ _____
Sam P. Israel

EXHIBIT 2

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

JOSEPH L. TEDESCO, et al.,

) Case No.: 08 CV 5001

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Plaintiff(s)

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EXHIBIT 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

**JOSEPH L. TEDESCO, PHOENIX CAPITAL
WORLDWIDE II, L.P. and PHOENIX CAPITAL
WORLDWIDE MANAGEMENT II, LLC,**

Plaintiffs,
– against –

**JASON JOHN KONIOR, PHOENIX CAPITAL
WORLDWIDE, LP and PHOENIX CAPITAL
WORLDWIDE MANAGEMENT, LLC,**

Defendants.

CLERK'S CERTIFICATE

Case #: 08 cv 5001

I, J. MICHAEL MCMAHON, Clerk of the United States District Court for the Southern District of New York, do hereby certify that this action commenced on May 30, 2008 with the filing of a summons and complaint, a copy of the summons and complaint was served on defendant by personal service upon an individual serving as receptionist at 20 West 20th Street, N.Y. 10011, the Defendant's business address and proof of such service thereof was filed on June 4, 2008.

I further certify that the docket entries indicate that none of the defendants have filed an answer or otherwise moved with respect to the complaint herein. The default of the defendants is hereby noted.

Dated: New York, New York

J. MICHAEL MCMAHON
Clerk of the Court

By: _____
Deputy Clerk

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

08 Civ. 5001 (PKC)

**JOSEPH L. TEDESCO, PHOENIX CAPITAL
WORLDWIDE II, L.P. and PHOENIX CAPITAL
WORLDWIDE MANAGEMENT II, LLC,
Plaintiffs ,**

- against

**JASON JOHN KONIOR, PHOENIX CAPITAL
WORLDWIDE, LP and PHOENIX CAPITAL
WORLDWIDE MANAGEMENT, LLC,**

Defendants.

-----x

Affirmation of service

Sam P. Israel hereby affirms under the penalties of perjury as follows:

1. I am counsel to the Plaintiffs in this case.
2. On August 19, 2008, I served by first class mail a copy of the attached affirmation in support of the clerk's entry of default upon defendants as follows:

Jason John Konior, 30 Alice Court, Bethpage, N.Y. 11714 and;

Jason John Konior, Phoenix Capital Worldwide Management, LLC and
Phoenix Capital Worldwide, LP, 20 West 20th Street, Suite 217 New
York, N.Y. 10011.

Dated: August 19, 2008
New York, NY

s
Sam P. Israel (SPI0270)